1-6220-16363-3

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE HENNEPIN COUNTY TRANSPORTATION DEPARTMENT

In the Matter of the Application for Relocation Benefits for P. Heck Design, Inc.

ORDER ON PETITION FOR RECONSIDERATION

On March 16, 2005 the Claimant, P. Heck Design, Inc., filed a Petition for Reconsideration of the Order for Summary Disposition issued by the Administrative Law Judge on March 9, 2005. Respondent Hennepin County filed a Reply to the Petition on March 23, 2005.

P. Heck Design, Inc., is represented by Jon W. Morphew, Esq., of the firm of Schnitker & Associates, P.A., 2300 Central Avenue N.E., Minneapolis, MN 55418. Respondent Hennepin County is represented by John J. March, Assistant Hennepin County Attorney, C-2000 Government Center, 300 South Sixth Street, Minneapolis, MN 55487.

Judicial Review of this Order and the March 9, 2005 Summary Disposition Order may be had by writ of certiorari to the Minnesota Court of Appeals.

Based upon the filings by the parties, the record in this matter, and for the reasons set out in the Memorandum which follows:

ORDER

IT IS HEREBY ORDERED THAT: the Petition for Reconsideration is DENIED.

Dated this 29th of March, 2005.

s/George A. Beck
GEORGE A. BECK
Administrative Law Judge

MEMORANDUM

The Claimant seeks reconsideration of the Order Granting Summary Disposition in favor of Hennepin County that was issued by the Administrative Law Judge on March 9, 2005. Under Minn. Rule pt. 1400.8300, an Administrative Law Judge must grant reconsideration where a decision is not justified by the evidence or is contrary to law and where to deny reconsideration would be inconsistent with substantial justice. Although this case is not governed by the Administrative Procedure Act and the Rules of the Office of Administrative Hearings, the rule can appropriately be followed as a guideline in considering the Petition, and the Reply filed by Hennepin County.

The Claimant argues that the Summary Disposition decision renders moot the 18-month period for filing claims under the federal regulation.[1] It suggests that the decision requires a claimant to wait until the end of the 18-month claim period before it elects to submit its claim in order to know for sure the exact amount of costs incurred. It suggests that this interpretation is contrary to the spirit and purpose of the Minnesota Uniform Relocation Act, which seeks to ease hardships on displaced businesses.

Under the federal regulation, the Claimant must, within the 18-month time period beginning with the date of displacement, make an election as to whether it will file an actual cost claim or a claim for a fixed payment and file the claim. A Claimant need not wait until the end of the period if it believes all costs are known. There is no indication in statute or regulation that the legislative intent is to allow businesses to file a number of actual cost claims or to switch between fixed payment and actual cost claims within the 18-month period. The Summary Disposition Order recognized this in stating that meaning had to be attached to the word “elect” and the phrase “in lieu of” in the federal statute. These words imply that while a Claimant has 18 months to file a claim, it may not make an election to receive a final payment and then file another claim (make another election) within the 18-month period.

The Claimant also argues that nothing in the statute, case law or legislative history proves that a displaced business is not allowed to shift to an actual cost claim after it has elected to accept a fixed payment claim. It is, of course, also true that there is nothing in statute or in case law that allows a claimant to switch claims either. But it seems likely that if such a procedure were intended, it would have been explicitly stated. And, as stated in the March 9, 2005 Order and Memorandum the *election* or choice of a fixed payment *in lieu of* an actual cost claim suggests that a later switch to an actual cost claim is not permissible.

Based on the facts of this case, where a fixed payment was elected, agreed to in writing, and then paid, the language of the federal regulations and statute cannot reasonably be construed to allow an actual cost claim several months later, even though it is filed within the 18-month period from displacement.

G.A.B.

[1] 49 C.F.R. 24.207(d).